

## Bureau of Indian Affairs, Interior

## § 116.4

and financial rights or those of persons directly affected by its activities.

### **PART 116—CREATION OF TRUSTS FOR RESTRICTED PROPERTY OF INDIANS, FIVE CIVILIZED TRIBES, OKLAHOMA**

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AUTHORITY: Sec. 7, 47 Stat. 778.

SOURCE: 22 FR 10552, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

#### **§ 116.1 Application for trust.**

Indians desiring to establish trust estates under the provisions of the said act must make written application therefor to the Secretary of the Interior through the superintendent or other official in charge of the Five Civilized Tribes Agency, Muskogee, Oklahoma. The application shall designate the trustee, the beneficiary or beneficiaries and the manner in which it is desired the corpus of the estate shall be distributed upon the termination of the trust. A form of application will, upon request, be furnished by the said superintendent and should be filled out and executed in the presence of the field clerk or, in the office of the superintendent and duly attested by the field clerk or some other Government employee. The information required by the form of application and such other information as may be requested concerning the Indian and his affairs shall be carefully considered by the superintendent who will affix his recommendation to the application and forward it to the Secretary of the Interior with his report, which report shall contain full advice with respect to the education and business qualifications of the applicant, his ability to read, write and understand the English lan-

guage, his reputation for industry and thrift and what experience, if any, he has had in a business way.

#### **§ 116.2 Obligations of trust company.**

The form of proposed trust agreement shall be executed by the trust company or banking institution selected as trustee, and shall be signed by and submitted with the application of the Indian, together with a statement in writing by said trust company or banking institution similar in form to that prescribed by the Comptroller of the Currency (or by the State banking department), showing fully the conditions of said trust company or banking institutions on a day not more than 1 month prior to the date of the application for the creation of the trust. The agreement must also be accompanied by a written certificate duly executed by the trustee to the effect that it has not paid or promised to pay any person other than an officer or employee on its regular payroll any fee, charge, commission or remuneration for any service or influence in securing or attempting to secure for it the trusteeship in that or in other trusts to which the regulations in this part apply.

#### **§ 116.3 Secretarial approval discretionary.**

No such trust agreement will be favorably considered unless in the judgment of the Secretary of the Interior the trustee therein named is deemed by him to be on a sound financial basis and otherwise sufficiently qualified to justify approval of such trust.

#### **§ 116.4 Contents trust agreement.**

In addition to the subject matter of the trust, its object and beneficiaries, duties of trustee, etc., the form of trust agreement shall contain provisions to the following general effect:

(a) That such of the current income from the corpus of the estate as may be payable to the Indians of the Five Civilized Tribes of one-half or more Indian blood shall be remitted by the trustee to the Secretary of the Interior or such other official as he may designate for appropriate disposition.

(b) That the trusts declared and each of them shall be irrevocable except

with the approval of the Secretary of the Interior, but, subject to his approval, the beneficiaries named in any approved trust may be redesignated by the maker without in any manner otherwise impairing or altering any of the provisions thereof, particularly the duration of the trust or the compensation to be paid to the trustee.

(c) That neither the corpus of the trust estate nor the income derived therefrom is, during the restriction period provided by law, subject to alienation or incumbrance, or to the satisfaction of any debt or other liability of any beneficiary of such trust during the said restricted period.

(d) That if the trust be annulled, canceled or set aside by order of any court or otherwise, the principal of the trust with all accrued and unpaid interest shall be returned to the Secretary of the Interior as restricted individual property.

(e) That the trustee shall render an annual accounting to the Secretary of the Interior and to the beneficiary or beneficiaries to whom the income from any such trust for the preceding year or any part thereof was due and payable, such annual accounting to be submitted within 30 days following the ending of each annual period of the trust, and the trustee shall render accounting to the Secretary of the Interior at any other time on written request by the Secretary of the Interior, within 30 days from such request.

(f) That except as to U.S. Government bonds and other securities fully guaranteed by the Federal Government in which such funds in the hands of the trustee may be invested without limitations, the following limitations are prescribed on the right of the trustee to invest or reinvest any part of the corpus or income from the trust:

(1) Not more than 30 percent of the estate may be invested in securities exclusive of all other limitations contained in this part, which appear on the current list of legal investments for savings banks prepared by the superintendent of banks of the State of New York, except that this authorization shall not include the purchase of public utility securities or railroad securities which do not represent obligations of operating companies, or the

purchase of stocks: *Provided, however,* That in the purchase of such securities not more than 20 percent may be invested in general obligations issued by States or by any political subdivisions thereof, and not more than 10 percent may be invested in public utilities and in railroad securities, or in either of them;

(2) Not more than 15 percent of the trust estate may be invested in Federal land bank bonds issued under the provisions of the act of July 17, 1916 (39 Stat. 360) as amended;

(3) Not more than 40 percent of the trust estate may be invested in total loans secured on first deeds of trust or first mortgages on improved city or farm real estate situated in the States designated in the trust agreements, but no such loans shall exceed 50 percent of the value of the real estate and improvements appraised not more than 30 days prior to such investments by one or more appraisers selected with the approval of the Secretary of the Interior;

(4) No part of the trust fund shall be invested in the purchase of real estate or stocks for the trust except to protect the trust estate in foreclosure or other proceedings;

(5) No part of the trust estate shall be invested in any kind of foreign securities, loans, or other properties, private or public.

#### § 116.5 Eligibility of appraisers.

Hereafter no person who is interested directly or indirectly, whether through intimate personal, financial or business connections, in any trust company or banking institution designated as trustee under an approved trust agreement involving restricted Indian property, or who is an officer, director, or employee of such trust company or banking institution, shall act as an appraiser of real estate in connection with the making of loans from the trust estate to be secured by first deeds of trust or first mortgages. Nor shall any person having an interest in obtaining such a loan, either personally or as an officer, director or employee of any company, association or partnership seeking such a loan, act as an appraiser. An investigation into the qualifications of all persons selected as